SUPREME COURT OF THE UNITED STATES.

No. 269.—October Term, 1927.

Aileen E. Mitchell (Successor of C. Minkwitz, former Treasurer of Fort Bend County, Texas), as Treasurer of Fort Bend County, Texas, et al., Petitioners, *vs.* J. W. Hampel, et al., Trustees in Bankruptcy etc., et al.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit.

[March 19, 1928.]

Mr. Justice Holmes delivered the opinion of the Court.

J. H. P. Davis & Co. of Fort Bend County, Texas, partners, were adjudicated bankrupts both as a firm and individually. They were bankers and depositories of County funds. As such they had given two joint and several bonds both signed by the firm in its firm name as principal and by some of the members of the firm individually, with others, as sureties. The County sought to prove its claim not only against the firm but also against the separate estates of the surviving members all of whom had bound themselves severally as well as jointly. The double proof was allowed by the District Court but was disallowed by the Circuit Court of Appeals on the ground that the Bankruptcy Act, § 5f, by appropriating the individual estate of a partner to his individual debts excluded by implication debts that were also debts of the partnership from sharing with the former on equal terms. (Act of July 1, 1898, c. 548, 30 Stat. 548. C. Tit. II, c. 3, § 23.) 18 F. (2d) 3.

We are of opinion that the District Court was right. Except so far as the statute may prevent it a solvent man dealing with another for money to be advanced to or deposited with his firm may determine the security to be given as he and the other may agree. He may mortgage his private estate and we perceive no reason why he may not create a claim against it in bankruptcy by

a separate contract of his own. The firm creditors know that they will be postponed to individual creditors, and that they have no voice or knowledge as to who the individual creditors shall be, or what the amount of their claims. The only real equity is not to disturb the equilibrium established by the parties. Those who take less security have no claim to be put on a footing with those who require more. It is not necessary to go into nice speculations as to what a partner can add to the liability already incurred when he offers a separate contract in addition to that which is made by his firm. We may assume that by the firm contract he is bound to the uttermost farthing—but he is bound only as a member of the firm and therefore subject to the bankruptcy rule. His creditor may require more and we can see nothing to hinder his putting himself in the position of a separate debtor also. Certainly we find no prohibition in the bankruptcy law. *Myers* v. *International Trust Co.*, 273 U. S. 380. By making a separate contract although in the same instrument he calls the separate liability into being, as presumably he intends to and as he has a right to do. *Robinson* v. *Seaboard National Bank of New York*, 247 Fed. Rep. 667, 668, 669, *Ibid*, 1007. The intent and transaction are not illegal in Texas. Their specific effect depends on the Bankruptcy Act.

We have dealt with the only question which induced the granting of the writ. It does not appear to us necessary to go into further details.

Decree reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.